

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1104 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MUMTAZ TALKIES

Versus

STATE OF GUJARAT

Appearance:

MR JJ SHAH for Petitioners

SERVED BY DS for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 21/01/97

ORAL JUDGEMENT

1. Petitioner No.1 is Mumtaz Talkies which is run by petitioner No.2 Roshankumar B. Shaikh. It is the case of the petitioner that on 24th August, 1994 an order has been passed ex-parte against the petitioners and the petitioners cinema licence has been cancelled and petitioners were informed of the said order by letter dated 26th August, 1994. Thereafter, the present petitioners have approached the Civil Judge (S.D.) Nadiad

by filing Civil Suit No.468 of 1994. It is further case of the petitioners that they have filed an interim application under Order 39 and Section 151 of the Code of Civil Procedure before the learned Civil Judge (S.D.), Nadiad and the learned Civil Judge (S.D.), Nadiad was pleased to issue interim order in favour of the petitioners. It is further claim of the petitioners that inspite of the said order, the respondent No.3 issued a show cause notice on petitioners on 2-12-94 on the grounds which are mentioned in the earlier order of August 24, 1994 and thereafter, order was passed against him by the respondent No.3. It is their further claim that the said order was challenged by preferring an appeal as provided by the rules but the appeal has been dismissed, and, therefore, the petitioners have come before this court. It is their claim that once the Civil Court has stayed the earlier show cause notice of 24th August, 1994 by passing the interim order in Civil Suit No.137 of 1994, the action taken by the respondents Nos. 2 and 3 on the basis of the same grounds which are the subject matter of the show cause notice of August 24, 1994, are clear acts of contempt of courts and the said acts are malafide and they are also illegal, and, therefore, petitioners have come before this court by filing this Writ Petition under Article 226 and 227 of the Constitution of India.

2. It is an admitted fact that the present petitioners are served with a notice by the respondent No.1 that the petitioners are having 911 seats in there theatre, whereas petitioner is paying taxes on the basis of 611 seats. It is the claim of the petitioners that there are only 611 seats and not 911 seats. Thus, there is a disputed question of fact between the parties as what is the total number of seats in the theatre and for what seats the petitioners are liable to pay taxes to the revenue department. Now apart from this involving question of fact as regards the dispute between the parties, admittedly the present petitioners have gone before the Civil Court to challenge the action of the respondent regarding the running of the said theatre by the petitioners. Admittedly the said suit is pending till this date. When that is the position, the petitioners could not be allowed to come before this court to agitate same questions which are raised before the Civil Court by way of filing a suit, when the said suit is pending before the Civil Court.

3. It is the claim of the petitioners that by the subsequent action of 2nd December, 1994, the respondents are committing the contempt of the interim orders passed

by the Civil Court (S.D.), Nadiad in their suit in their favour. If that is the position, then the petitioners will have to move the Civil Court (S.D.), Nadiad, to take action against the respondents for the contempt of courts, as well as under Rule 2A of Order 39 of the Code of Civil Procedure.

4. It is the claim of the petitioners that the subsequent action which are taken by the respondents are on the basis of the initial show cause notice issued on 24th August, 1994. It is their claim that the said original action by way of issuing show cause notice dated 24th August, 1994 is illegal and contrary to the provisions of law and for the purpose of getting a declaration to that effect they have filed the Civil Suit in the court of Civil Court (S.D.) bearing Civil Suit No. 137 of 1994. It is their further claim that inspite of the interim order in their favour, the respondents have taken further action by issuing show cause notice on 2-12-94 and passing further orders which are also confirmed by the appellate authorities. In that case the petitioners have to move the Civil Court by seeking the amending their plaint in order to incorporate the relief on account of happening of subsequent events. But the petitioners could not allowed to come before the High Court when the said Civil Suit is pending. Thus, I hold that the present petition is not tenable in law. I, therefore, reject this petition. Notice stands discharged. Interim orders stands vacated.

5. The learned advocate for the petitioners wants to go in appeal, the operation of this order is stayed till 31-1-97.

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